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## Private expropriation against the public interest in Iran

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### Abstract

*Private ownership is the fundamental rights of individuals in the society and having high jurisprudence and legal support. However, in contrast to public interest, administrative agencies can apply to withdraw the property, although there are evidences for the arbitrariness of the legal nature of administrative agencies. It seems that the unilateral obligation of this action is preferred. Expropriation is in contrary to the principles, therefore for health acquisition, the ceremony which is prescribed by lawyer that non-compliance will invalidate the ownership.*

*Keywords: Expropriation, Public interest, Administrative agencies, Ownership*

## 1 Introduction

The private ownership is the most important rights of the people in the society. The contemporary legal systems each have emphasized the importance of private property.

William Belk Stone, the lawyer of 18<sup>th</sup> century says "no matter such as the acquisition of the property rights did not attract the human interest and intellectual".

Ser Hanry Fin says "No one can attack to private ownership and at the same time say that, the civilization is honored, the history of both are inseparable ". (Koly, 1973: 492).

Pertalis the most influential writer in France's civil code, says " if we study the cradle of the nations, we are convinced that as long as there have been humans, there have been owners too...., and in all ages and places we will see the footprints of private property. It is the ownership that revive the existence of human and made them rich and wide "(Pilvar, 2013:22). In Islamic legal system the private property is sacred and its value as the value of life and dignity has been granted, the Holy Prophet said "the Muslim property is honorable "

Despite the importance of private property in contemporary legal systems, will be influenced and restricted by some factors. One of the most important factors is public interest by which private property is limited or denied.

The concept of public interest has been of interest to scholars for many years but it was welcomed by scientists in other areas from the 17<sup>th</sup> century when it explains again by John Stoart Mill and Jormi Bentam ( Haj Zadeh,2014: 7).

In Islamic rights, besides the meaning of "For the sake of Allah" in verse 60 of Repentance surah among the other religious teaching (About attention to Muslims affairs and the virtue of charity) can also see signs of public interest

concept. To some extent some authors considered the expropriation of private property about things that its benefit is for the publics, as an example of dedications to the public interest in Islam (Amid Zanjani and Mosa Zadeh, 2009:7)

In this paper which aims to analyze the effect of public interest against private against private property, in the first speech, the history and the concept of expropriation and the concept of public interest have considered and in the second speech the nature of expropriation and it's condition and in the third speech a quick look at the examples of dispossession have considered.

## 2 First Speech

### History and concepts:

Legal action of expropriation rights has ninety years old record in Iran. In this speech which consists of two parts, at first the concept of the history and second the concepts of expropriation and public interest will be considered.

### 3 Historical Background:

The first law that enacted in Iran was about expropriation for the development of the road and in September 1927 adopted as a single article. The law requires that; the ministry of finance is authorized to pay 39 US \$ from additional income 1305 in order to bring water from outside to Tehran and pay the price of failure caused by widening street and the buildings in that street. The mentioned article only determines the payment for damages caused by the widening of the roads and did not consider how to handle it. Then on 13 November 1933, the law of the construction and development of the roads and streets has adopted.

The law also determines how to handle it, finally at the first of 21.June.1941, a law amending the development pathways was approved that deal with disputes between municipalities and

property owners and assign it to three representative council including city council agent, justice representative and ministry of interior agent. The committee vote was non-complaint and final.

The approval of the council of ministers at 18.Sep.1946 and in 43 articles, determined the formation of jurisdictional dispute, terms of petition, summon the parties, the way of consideration, issuing executive and etc.

The article 1941 and its approval were used for a long time by municipality. Then it was abolished by virtue of modernization and urban development adopted in 1995. Later, the laws and other regulations were adopted on different issues which is as following. (Big Rig, 1990:29&30).

- 1- The law of the state, municipalities, endowments and banks approved by the joint commission of justice and approved by the assembly in 1956.
- 2- Law relating to land acquisition approved in 1960.
- 3- The modernization and urban development dated 1968 and subsequent amendments in the years 1969, 1971,1972,1975,1976.
- 4- A bill to amend some of the provisions of the law of renovation and development 04.sep.1979.
- 5- The program and budget approved law dated 1969.
- 6- Abbass Abad enforcement law for modernization dated 29.Jan.1973 and amendment dated 29.Jan.1973 and adjunct dated 21.May.1975.
- 7- Land Transactions Act approved at 1972.
- 8- The established law of Tehran Urban Railway Company enacted on 06.May.1966 and a bill to amend the law of establishing a railway company and its suburbs enacted on 06.July.1980.
- 9- Cancel ownership law of urban waste and its construction quality enacted on 26.June.1979.
- 10- Cancel the amendment of wastelands and its construction quality enacted on 26.June.1979.
- 11- Bill of three and two notes adheres to the law of canceling the urban land ownership and its construction quality enacted on 16.July.1980.
- 12- Regulations act of canceling the wastelands and its quality enacted on 13.Aug.1979.
- 13- Bill on the abolition the wastelands ownership that is between legal limits in Tehran and its privacy shielding enacted on 06.Feb.1980.
- 14- Purchase legal bill, ownership of land and property for public programs, government civil and military program Approved 06.Feb.1980.
- 15- nUrban land law enacted on 18.March.1982 for a period of 5 years
- 16- Executive regulations of urban lands approved 20.June.1982 and repeated revisions based on court of justice opinions have been done in some of articles.
- 17- Land amendment law acted on 05.April.1988 by expediency council
- 18- Law of the lands approved 13.Sep.1987.
- 19- Executive regulations of the lands enacted on 06.July.1988 by the council of ministers

These are among the laws that ownership expropriation and restriction is predicted.

Among the laws before the revolution, the most important is the modernization of urban development in terms of municipal and urban development, approved 1968.

The law imposed the possession and purchase people property for modernization projects and urban development and create utility and roadway development and supervise the construction and the way of usage of lands in the city areas.

After the Islamic Revolution also aims to respect the interests and the public interest was passed the regulations in the field of expropriate.

Legal bill for the purchase of the lands and the lands required by government and municipals in order to create and develop public services such as roadway development, railway or street, passages development , water piping, oil and gas, drilling creek and etc for public services approved 1979 which it is used by all executive agencies. In addition, will cite to the law of assignment, reclamation in Islamic republic of Iran approved 1979 , the law for protection and development of green space by municipalities approved 1980, the law for nationalization of urban land approved 1983 , the law for nationalization of the mines approved 1985 and amendment dated, the law for land amendments in Islamic Republic of Iran approved 1986, the law for applause and foreign investment protection approved 10.Mrch.2002, patent law , industrial projects and trademarks approved 2007.

## **B - Implications:**

### **1-The concept of expropriation**

The concept of expropriation for the public interest is the executives which aimed at addressing the needs of public can allocate private immovable property ( such as land and construction) to public requirements ( such as development, create passages and public buildings ) against payment of a fair price. (Sadr Zadeh Afshar, 1973:54).

The public interest, however it is something for the general population is considered to be valuable and every one can use it and will use all its potential.

The most common type of expropriation is private property ownership, ownership and physical possession of all or part of the property

(both movable and real). it means that the government in order to implement its plans to expel the owner of all or part of the property and owned their property, of course sometimes this is temporary not permanent; for example police for the aim of operational needs require a house for several days or months.

But the problem becomes more complex when the government does not seize private property but by applying a plan or a regulation and without physical possession of the property, remove the authority of the owner and limit ownership. It explains that every owner has different rights to its property, the most famous of is divided into three right owner rights; use, exploitation and expulsion of the property. (Pilvar, 2012, from page 91 onwards).

Whereas government may restrict or divest these rights; for example, not allowed to sell property or limit building permit, undoubtedly, some of these restrictions is reasonable and essential for urban life and its demands, but may be the government indulgence in this regards. Thus to say on the one hand the government regulation and public programs, and on the other hand these actions will lead to unfair restrictions. So any restrictions on ownership, is not expropriation, but some of them are.

From the legal perspective it is not necessary to expropriate the property be physical possession of the property and stripping all the equity, but also stripping away some of the powers of private property is considered as expropriation of private ownership because as a result, the value of the property decreases.

On the one hand it is the duty of law to consider the needs of society and its development and on the other hand to force the government to compensate if the restriction is serious and if the decision taken by the government is the possession of the private property ,any explanation except this not only is unfair but also contrary to the need for compensation but shows the possibility of fraud by the government to escape to pay compensation. Because the government when requires the property, it can instead of financial ownership, declare unlawful possession of the owner's equity with the implementation of a plan or regulation.

For example, for the creation of nuclear facilities and the need to create space for it, forbid any construction around the property owners, moreover interpretation otherwise is contrary to apply legislation and necessary compensation. However should be considers that the swap rate is lower in these matters because the government does not take the entire property. (Pilvar, 2014: 44).

### **The concept of public interest**

Despite the relative concept of the compound "interest" and "public",

this concept, like the most in the humanities has been different interpretations, as in some opinions , the concept of public interest as well as the concept of "public" is widespread. (Svenneving & Morrison,2002:1) (Quoted from Haj Zadeh,2014:6). And quoted from the others, this concept is relative and random (Abbasi, 2010:151) and is flexible and change according to time and situation (Khakpoor, 1997:137).

Generally, three approaches can be seen on the definition: in the first approach instead of logical definition of the concept, considers its manifestations in order to clarify the concept for audience. For example some authors believe that public interest summarizes into three issues: discovery and disclosure of crimes, health protection and public health, avoid misleading the people with comments of the people or other institutions. (Haj Zadeh, 2014: 6). Some of the lawyers tried to present some examples and manifestations of the concept without any definition.

(Mosa Zadeh, 2002: 56-57).

It is clear that such a definition is not complete and only examples of a concept and its expression in a particular social and intellectual context is not enough, and has no meaning for the communities outside of this context.

In the second approach, public interest is defined in teleological way and based on target society, and something that everyone will benefit from it. So the public interest is any action that creates the benefit for the public. (Haj Zadeh, 2014:7). Some of the scholars of administrative law in

France in this approach knew public interest, as the common interests of all members of a group. (Ansari, 2002:81).

According to the third approach, the definition of public interest is based on the principles and general criteria. In the approach, public interest is something that is valuable for the most of the people and is desirable for them if they benefit from or not. Such approach is seen in International Federation Accountants for the definition of public interest which the "public" is the most developed in the society and "interests" including all things that is valuable for the people in the society. Of course the assembly (IFAC) states that the differences in cultures, society values and moral systems should be consider in determining the public interest and which institutions have to offer it. The other definition in this approach says public interest is everything that meets the legitimate needs of citizens. (Abbasi, 2010:151).

In general, a combination of the second and third definitions approach the public interest is everything that has a value and benefit to publics and every will use all its potential.

Any interest that is not covered by this definition, shall be deemed self-interest and in time of conflicts between public interest and self-interest, rely on the principle of public interest preference ( which is accepted in different legal systems with different limitations ) , the public interest is in priority. So assigning the immovable property such as people land in favor of general requirements for the development and creation of roads by the government, municipals and governmental organizations with the aims of public services justify on the base of this principle.

### **Second Speech- The legal nature and conditions of the executives on expropriation**

#### **A. The legal nature of executives action**

In this part the main question is "what is the legal nature of these ownerships?"

Will the agreement on the part of the administration according to law to purchase land owned by the landlord does one of the transactions subject to the general rules of contract, in particular the principle of autonomy or any kind of state sovereignty and in this regard the executive with force majeure action.

### **Theory of contractual agreements:**

According to this view, the agreement of administrative agency with land owners to implement the developing project followed the public rules of the contracts and will be done by one of the possession contracts.

Theory of contractual agreements of administrative agency and land owners subject to the implementation of developing projects, the prevailing theory among the experts of civil rights. (Kamyar, 2008:179)

According to the private law point of view , on the basis of state sovereignty , autonomy and dominance withdrawing funds from someone else funds requires the will of its owner. Therefore, with this attitude, first in order to initiate an ownership, benefits from ownership contracts, can be achieved by the parties acceptance so citizens can with the use of the contract of sale, lease, peace or other contracts or the contracts with the article no.10 of civil law, leave property rights or the rights of their profits to administrative agency and government.

This way that ensures full respect for individual property rights, has been considered precisely in purchase and land acquisition law and calendar buildings law (Kamyar, 2008: 179).

One of the authors is noted an agreement between the municipality and the owner as "securing compliance" (Beheshtian 2009: 220).

It means that both parties, the municipality and the owner, must act with compromise for the acquisition. In his opinion the first method to transfer the ownership rights , is benefits from ownership contracts that can be achieved by the parties acceptance and according to the provisions of purchase and land acquisition , this method is in priority to the other methods. So when the agreement is ready, administrative

agency should provide ownership rights in this way (Beheshtian, 2009: 55).

The author is known the legal nature of the assignment as contract and believes that other person as a deputy for the owner acts for transferring the rights to municipality (Beheshtian, 2009: 65).

## **2- Theory of unilateral obligation**

Despite what was said, there are evidences that show even the agreements of administrative agency with owner as a unilateral obligation contract.

Some of the authors of civil rights, knew administrative agreements with land owners for the implementation of development projects puts on the kind of contract which follow the principles of the contracts, however in some cases, explicitly or implicitly views emphasized the violent nature of the agreements, at least considered it beyond the usual contract between two person (owner and administrative agency) from the usual contract. (Nourozi, 2005:26). Something that cause that these authors paid more attention to the violent aspect of this agreement, is assuming the priority of public rights on private rights.

Since public law is responsible for the protection of public interests and its philosophy is creating security and public order, also is prior to the rights of individuals; therefore in the clash of these two rights, the priority belong to the public law, even in private law the lawyers somehow considered the public interests; because of this no one can use its rights in the way against the main goal that is public interest and peace and destroy this main goal. (Katozian, 2001:84).

Protect the public rights will be done with the government sovereignty.

"Sovereignty is the supreme authority of command or the possibility of acting the will superior to the other will ". (Ghazi, 2001:72). If so apply the superior will to owners causing them

to be expropriated because of public interest. Administrative agency as a public institution has sovereignty and uses its power in their agreements with the owners.

"In the current law the principle of autonomy lost its previous position and the mutual agreement is not respected as before. It had a growing contract rules and in some parts like work agreement, the satisfaction of both parties do not a significant change in the condition and the legal results. Social aspect of some contracts is so important that the law imposes on individuals; it means that they were the parties of a contract that they were not satisfied to close it. (Katozian, 2001:83).

Perhaps due to these considerations that some authors distinguish between purchasing for internal needs and purchasing to meet the needs for the implementation of development projects, they believed that if the administrative agency for its own use requires the same ownership or interests of a property in a unique position, such as other legal entities would not be superior to the other part of the deal; so in this legal relation, the principles of private contracts is executive , but assuming that the acquisition of the administrative agency is "office & tool" such as ownership in the time of implementing approved plans, according to being public property , the principle of private contracts would not be executive such as the freedom of contract principles and autonomy.

Though in this kind of possession, we try to observe the aforementioned principles with « compliment and policy and ...» (Noroozi, 1384:91). According to this, in cases that administrative agency does the actions like the purchase of a building and administrative use, faces with the labor parties, like private right's persons based on the contract and civil rights principles. (Noroozi, 1380: 78). But if a public entity wants to establish a road or street by observing criteria and the requirements and the owner owners whose land is in this way and they are not satisfied with their land's sell, the possession is possible without the intention and satisfaction of the owner. This possibility is due to the effect of public rights principles on the private rights (Noroozi, 1384: 26).

### 3- Analysis and assessment of views

In implementing civil plans , It is discussed two different views about the agreement's nature of the administrative agency with the land owners ; the first view that is formed by the approach of private rights and the principle of respect to the owners, refers to the conventional aspect of administrative agency's agreement with the owners and government. This view declares the possessions based on the Act 8 of purchasing rule and possessing the estate as "a contract" and agreement. The agreement is set between the administrative agency on one hand and the owner on the other hand (Beheshtiyani1388:65). The second view refers to the possessive aspect of the administrative agency's agreement. Due to the apprehension of the public need and the rule of public rights principles over private rights, this view concludes that society need and its recognition by the public entity about this case obliged the owner to obey it. The interest of the society and people is more important than the evaluation of profit and loss; so, owners have no option and they should accede to this policy. Regardless of the principle of equality among people on the imposition of the public affairs ministration, the owners deserve to receive their compensation. They don't have the power in the transference of their possessive rights to the public entities but the lawmaker (legislator) necessitates coming to an agreement just in assessing the compensation (Act 3 of the purchasing rule and land's possession) and not in the principle of land transference to the administrative agency (Hashemi, 1381: 65). Although, the recent views that prefer the public rights over the civil rights, may face criticism and assign without base; as many urban law authors have the contrary idea with the laws, free will and even the will of lawyer, it seems that due to the basis of juridical public rights, the possessive aspect of the agreements in administrative agency with the owners has may advantages and we can say that the forcible and obligatory aspect of applying this plan, is clear from the beginning. The private owners have to transfer the landed property to the administrative agency; this obligation is due to the superiority of the public rights over the private rights and the superiority of public affairs over the private affairs; in other words,

with the above explanation, we can interpret that the action of administrative agency in taking the private possession away from the persons, is unilateral.

## **B- Criteria and requirements of governmental possession**

The bill of purchasing and property's possession for implementing public, civil, and military plans of government approved in 1358, sets some criteria and requirements for possession, and it is stated in the note 7 of the Article about the landed properties required by municipality that approved in 1370« from the date of enactment and under the Article 4 and the article «the legal bill of purchasing and possessing properties for implementing public, civil, and military plans of government» which was approved in 17/11/1358 at Islamic revolution council and related to the obligatory appraisal of the costs is nullified». So, for municipalities, criteria and requirements of the previous law about the properties are remained (Alizadeh Kharazi, 1390: 36).

### **1- The requirements for acquiring authorization**

The possession is an exceptional matter that can weaken the principle of dominance so, wherever there is an exception, its inclusion is limited.

#### **1-1-The existence of plan:**

In the clause 10 of Article 1 of the program and budget in 1351, it is stated that « civil plan is a set of special activities and services that is based on the justifiable, technical and economic or social studies that is done by administrative agency in a given period and it is implemented with the authorization for realizing the objectives of a civil plan». The aforementioned plans should be passed by beneficiary authorities. The above authorities are different in each case and it is usually specified in the law constitution or in the establishment law of the administrative organization.

#### **1-2-The necessity of plan's application:**

**1-3-**one of the necessary requirements of possessing a person's properties is the need of administrative agency for properties that are possessed by persons, if the related

agencies don't need to possess the above properties they won't have any rights for possession. If they get the property without need, the above deal will be nullified

#### **3-1 Plan's approval and the confirmation of the need:**

Due to legal matters like the legal bill about the purchase and possession ... that was approved in 17/11/58 and the law of assessing the property's condition situated in governmental and municipalities' plans, we can see that the mere existence of a plan cannot justify the possession, rather the necessity of implementing the plan should be also approved by the minister or the highest position in the administrative agency. The highest administrative position in the ministries is the minister and in municipalities is the mayor, but identifying this position in the institutes and public firms and entities and other organizations that are permissible to possess, is a little bit difficult and in each case, we should refer to the law constitution or the establishment rule of these organizations.

#### **4-1 Providing the possession's credit:**

The government should always sets the income and expenditure account according to the account law and the annual budget law. One of these expenditures can be the application of the approved plans that their credit should be specified and provided (Article 1 of the purchase bill approved in 17/11/58).

#### **5-1 Nonexistence of the possession's issue like land and installation in the control of the government:**

One of the requirements of the people land possession is that in implementing the plan, there shouldn't be any national and governmental lands or in the case of existence, it should be in the place of the plan's implementation. In the first note of Article 2 about the purchase bill and clause J of Article 11 about the land's regulation, approved in 24/3/71, the administrative agency is bound to declare the case to the ministry of land's housing and urban development in Tehran to the headquarters of



lands housing and urban development in the provinces before purchasing and possessing the land and make a request of transferring the lands suitable for the application of plan. If the clause doesn't observe the requirements and criteria of the land's possession, it seems that this deal is voidable and the property is restorable to the owner (Article 93 of public accounts law that was approved in 66). Note 1 of Article about purchase and possessions states that « administrative agency is bound to use the national or governmental lands for implementing the plan as far as possible».

### **6-1 The possession's issue is identical with the utility of the plan's issue:**

one of the criteria and requirements of possession and land's seizure is that the utility of the land or the properties should be matched with the approved plan for implementing the governmental plans or municipalities. According to the note 84 of the second development program law and Article 6 of its executive regulation approved in 8/9/74, administrative agencies are lawful in possessing the property whenever the required property for implementing the plan is matched with its utility and the administrative agency is not allowable to use the lands except when their utility is specified. Certainly, if the plan's implementation is necessary in a special place so that changing its place is impossible or difficult, the related authorities with that agency's suggestion change the land's utility and match it with the required plan (the committee of the Article 5 about the establishment law of Supreme council of lands housing and architecture approved in 22/12/51).

### **The formalities required by possession**

After getting the criteria and requirements for possession, the above agency has to fulfill the formalities. Nonexistence of the formalities may lead to cancellation of the whole possessing operation.

#### **1- The registration formalities**

After providing the criteria and requirements for possession, the agent that wants to possess the lands according to the approved plan, should

specify its registration tag and its limit. Specifying the registration tag of a property is difficult when the access to the owners is not possible or the owners don't want to present the document. Nevertheless, since specifying the tag for the lands and the properties is done respectively according to the Article 14 of the registration law, regarding the number of the registration tag or the adjacent property, the registration tag can be obtained by the description of the lands or properties (Jame Bozorg, 1369:145). Although in the note 2 – Article 2 of the bill about the condition of purchasing approved in 17/11/58, the land office should announce the place of the property and its registration status until 15 days from the time of inquiry. But, to prevent from the effects on not implementing this plan, the agency should declare the case to the land office to inhibit from redeployment. However, according to the land's law some explanations are given in this regard. According to the note 8, Article 9 of the land's law, the lands which are in the government and municipalities' possession is not transferrable to the others after the plan's approval. So, the agency should declare its intention about the possession to the land office after specifying the properties' tag. The reason of this is to prevent from the redeployment of the property for implementing the public and constructive plan. However, in a circular letter to the notary public, the local land office forbidden the properties' dealing after its awareness of the administrative agency's intention about possession. Now, this question is raised that what the implementation's guarantee of this prohibition is. In other words, if the subject of dealing's plan is raised because of the non-insurance of the circular letter to the notary public or notary's inattention to the prohibition of the dealing or some other reason, is the above dealing prohibited or not? Due to the Article 345 of the civil law that stipulates: «the thing which cannot be sold legally is invalid», there is no doubt in the invalidity of such dealing and the government or municipalities can chart the invalidity lawsuit against the conveyer and the transferee (Jame Bozorg, 1990: 147)

## **2.2- The declaration of plan's implementation and possession**

One of the formalities of possession and land's seizure by the administrative agency is the declaration of possession to the owner or owners and the masters of other legal rights. According to the note 3- Article 13 of executive regulation about the land's law and according to the note 2- Article 4 of the law bill about the method of purchasing, approved in 17/11/1979 and the Article of specifying the properties' status situated in the governmental plans and municipalities approved in 29/8/1988 and the note 4 of building calendar law, the properties and lands required by municipalities which is approved in 6/9/1991, the case should be declared by the owner of plan's agency to the owner or owners and masters of other legal rights in these ways:

### **1-2-2 the communiqué (sending declaration):**

due to the note 2 of law bill's Article on the method of purchasing approved in 17/11/1979 and according to the Article 8 of the above law and other mentioned laws, one method for declaring the possessory intention and specifying the experts or appraisal (that in the case of disagreement between the parties, the experts will assess the property) is the communiqué to the owner or owners and masters of other legal rights.

### **2-2-2 Publication in one of the wide circulation press or advertising in the area:**

in case of inaccessibility to the owner or owners or their refusal to receive and sign the declaration, administrative agency is bound to declare its intention based on the possession and lands' seizure of the people in one of the wide-circulation newspapers or advertising in that area to implement the required plans due to the note 2 , Article 4 of purchasing bill approved in 6/9/1991 and note 3, Article 13 of administrative bylaw on land's rules approved in 1991.

### **3-2 Dealing fulfillment:**

After specifying the registration tag of the property and considering the ministry of the lands housing and urban development's idea about the land's type (committee of issue- Article 13 of land's law) and declaring the case to the land office in order to prevent from its transference and declaring possessory intention to the owner or owners or other legal rights' master. It is the time of dealing and the formal transference of the possessory property. In such a case, there are 2 possibilities:

#### **1-3-2 Dealing fulfillment according to the agreement:**

As it is mentioned previously, the owner or the legal law possessors have no option except agreement on their land or land's transference that the government and municipalities need. Because, in the case of disagreement about the price or refusal to assign the experts for appraisal, they will be paid according to the law of land's value. According to the bill 3 and 4 of the purchase method and the Article of building, in the properties and lands that are required by municipalities, the principle based on the agreement and compromise in dealing fulfillment and the price specification.

#### **2-3-2 Dealing fulfillment without agreement:**

first, first, if the owner or possessors don't agree with the agency (although according to the law, the principle is based on the agreement) or they refuse to refer to the administrative agency for agreement, they'll have the rights to choose an expert for the price specification or not, if they have this right and refuse to assign an expert, we can say that this dealing is done without agreement. Second, there is no discussion about the purchasing method in the related rules and regulations and the appraisal is on the legal boards. Article 8 in the legal bill and purchasing method states that :« lands seizure, building and installation and evicting the owner before the dealing fulfillment and the payment of the properties' price is not allowable unless the definite dealing's fulfillment is not possible due to the obstacles like the owner's refusal of dealing, the ownership's disagreement, the owner who is unknown, mortgage of the

property, the owner's death, etc.» due to the above Article of the properties and land's transference, the possession of government and municipalities without the agreement or absence of the owners or other legal right possessors is possible if the below condition is existed:

- 1) The beneficiaries are informed about the possession's intention in one of the above ways of communiqué in the note 2- Article 4 of the aforementioned law (publishing in one of the wide circulation's newspaper or advertising in the area). The beneficiaries do not refer in spite of the possession intention's communiqué in the due date or before the insurance of the document registered by the government or municipality or in spite of reference, it is not possible to formulate the document and fulfill the deal with them, because the property has registration problems like objections to registration, the insurance of the document is in contrast with the land's limit or the owner's name or has legal problems like the lawsuit of the possessory document's nullification or the limitation's discrepancy with the adjacent lands or the owner is forbidden to deal.

3 The value of the property should be states in the local registered bank.

The local land office is bound to issue and submit the new ownership document in which the measurement of the land, building and installation is stated according to the conveyance by the attorney or his agent. Article 9 of the legal bill about purchasing method states that: "if the urgency of plan's implementation with acceptable reasons is necessary by the recognition of the administrative agency's minister, so that declaration in implementing the plan causes irreparable loss, before dealing fulfillment, administrative agency can take action in possession and plan's implementation by adjusting process verbal of the properties' status with the presence of the owner or his agent and in the case of his absence, the attorney's agent and official expert. However, administrative agency is bound to take action in maximum 3 months from the seizure's date to pay the price according to the regulations of this law. According the above Article, the administrative agency can take the possession of the property and take action in implementing the

plan in case that: 1- the urgency of plan's implementation is necessary. 2- The urgency reasons of plan's implementation should be justified. 3- The urgency of plan's implementation is necessary when declaration in the plan's implementation causes irreparable loss and damage. 4- The status of property should be written in the presence of the owner or his agent or in the case of his absence, the attorney's agent and the official expert. 5- the administrative agency is bound to pay the properties' price within 3 month from the seizure's date. 6- if the properties' price is not paid in due time, the owner or beneficiaries can refer to the local law court and make a request for sequestration of the plan's operations. 7- Law courts should verify the owner or beneficiaries claim out of time. 8. Sequestration's removal of plan's operations depends on the payment of the specified price.

### **The third speech –legal senses of expropriation because of the public interest**

In some laws, the private ownership due to the observance of public interest and benefits is expropriated or limited. In this part, we have a look in the most important rules which can take the private ownership for the public interest. In this regard, we can mention these rules: A- expropriation according to the municipality's law approved in 11/4/1955

#### **1. According to the Article 55 of the law, the most important cases in which the municipalities can expropriate are these:**

The construction of buildings like squares and stadiums based on the hygienic and technical principles, cooperation with the ministry of culture in keeping the buildings and ancient monuments of the city and the public buildings and mosques, prevention of the dwelling's establishment that is in contrast with the hygienic principles in the cities and produces disturbance, the construction of the streets and allies and squares and public gardens and development of the pathways to the extent of registration rule. Article 96 of the above low states that municipality can use the regulations of the road development's law approved in 1320 to provide the urban needs like public gardens,

create electronic and water installations that is necessary to reform the city and resolve public needs and all or part of the land or property or building situated in the city, should be possessed by municipality.

3- note 3 of the above Article states that the land of the public allies and squares and pavements and streets and generally pathways and the river bed and streams and the scupper of the cities and public gardens and public cemeteries and the trees of the public pathways situated in or around the city which are used by people, are public properties and are in municipalities' possession. Creating irrigation installation by the ministry of water and power in the river bed situated in the cities is permitted and municipalities are bound to observe the idea of ministry of water and power in advance to perform any civil operations in the river bed.

#### **B) Expropriation according to the related rules about mines**

1 Article 22 of mining law approved in 1/3/1983 amended in 26/3/1925 states that: due to the necessity and preservation of the Islamic society interest from the approved date of this law, utilization and exploitation of large mines are directly done by the ministry of mines and metals or public institutions or public firms whose stocks are pertained 100% to the government. Studying the history of this law (Article 15 of mines' law approved in 16<sup>th</sup> February 1938 and Article 19 of mine's law approved in 29<sup>th</sup> April 1957, clear the concept of public interest more. Below, these Articles are discussed shortly

Mining law approved in 16<sup>th</sup> February 1938: Article 15 of this law states that: the government can allocate the discovery and exploitation of the mines to itself from the viewpoint of country's public interest. In this case, according to this law, the owners' rights and the right of people who works in that mine should be observed.

2- Mining law approved in 29<sup>th</sup> April 1957: Article 19 of this law states that: the government can allocate the exploitation of some of these mines to itself from the viewpoint of country's public interest in essential cases and according to the need. In this case, due to this

law, the rights of people who work in that mine like the interest of the owners and the ground rent of the land's owners and the discovery right should be observed.

#### **C) Expropriation due to the legal bill of purchasing method and lands and properties' possession for implementing the public, civil and military plans of the government and municipalities approved in 17/11/1979 at revolution council:**

According to Article 1 of this law, whenever for implementing public, civil and military plans, administrative agencies require lands, buildings, installations and other laws related to these lands that are belong to the legal or natural persons... "Administrative agency" can buy and possess the requiring land directly by any special organization according to the regulation of this law. It should be mentioned that in this law, 5 criteria are set in legitimizing expropriation and possession for the administrative agencies. Observing these criteria is necessary to the agency and if the above criteria are not observed by the agency, the expropriation is illegal.

#### **D) Expropriation due to the conveyance method and reclamation in the Islamic Republic of Iran approved in 25/6/1979:**

Due on the Article 3 of the above law, the people's rights on the lands are within the responsibilities that they have regarding the utilization and legal expropriation....Article 4-successive non-utilization of he lands within 3 years without acceptable reasons, is similar to this fact that they don't want to use these lands anymore and the part of the lands which is not cultivated, will be treated like wild lands.

#### **E) Expropriation due to the law bill of conveyance method and reclamation in the Islamic republic of Iran approved in 26/1/1980:**

Article 1 states that " the aforementioned lands in this law are 4 kinds: A) unutilized lands and pastures B) cultivated lands by persons of firms that the Islamic law judges to their retraction C) wild lands that were cultivated before and due

to the criteria of previous regime were account as the person or firm's property. D) Arable lands Article 2 adds that "the lands of A and B are in the control of the Islamic Republic and the government should give their utilization to the persons or firms by observing the society interest and the need's extents and the people's ability or allocate them to the works which have public utility in cases that the society's interest necessitates". Regarding the lands of the clause C, fist the government gives the owners priority by observing the criteria of the lands in clause D, so that they can reconstruct them and if they don't do anything, the government will take them in order to devolve the utility and cultivation to the qualified persons.

#### **F) Expropriation according to the law of recording inventions, industrial plans and trademarks**

According to the Article 19 of this law, the government or an authorized person can exploit the invention

A) In cases that with minister's opinion or the highest position in that agency, public interests like national security, nutrition, hygiene or the development of other vital economical parts of the country behooves that the government or the third person exploit he invention or the exploitation of the owner's part or the authorized person is in contrast with the free competition and from the view point of that position, the exploitation of the invention is beneficial, the issue will be considered in a commission composed of the director of Registration Documents and Properties Organization, one of the judges in the Supreme court with the introduction of the judicature's director, attorney general of the country, president's representative and the minister of the highest position in that agency and if it is approved, the public organization or the third person without the agreement of invention's owner can utilize the invention. This law in 7/8/2007 was approved in the juridical and legal commission of the Islamic parliament and the Islamic parliament approved its tentative implementation up to 5 years according to the principle 85 of law constitution in 3/11/2007 the limitation of metal and moral rights of the

ownership due to the public interest, is accepted in the international regulations.

**G) Expropriation due to the encouragement and support of foreign investment approved in 19/12/2001.** Based on the Article 9 of this law, the foreign investment, is not subjected to the expropriation and becoming national unless, for public interest, due to the legal processes, in a non-prejudicial way and versus suitable payment of the compensation for the true value of that investment immediately before the expropriation.

#### **4 Conclusion**

Public interest is anything that is regarded useful and valuable for all of the people in the society, and everyone can use it. Private ownership in comparison with public interest is not creditable. 2 views were discussed and analyzed regarding the nature of the agreements of administrative agency with the properties' owners situated in the course of civil plan's implementation. It seems that

In contrast with the common view, the agreements of administrative agency with the properties owners should be considered as the possession and are liable to the public law's regulation, not like the private contracts that is set in the presence of the jurisdiction principle; because: first, possession view has more in common with the juridical bases that constitute the foundation of country's law, and second, the results from this view secure the public rights of the citizens and owners better and more. Regarding the possession requirements, it is necessary to mention that due to the purchasing law and land's possession, formalities are done for the implementation of public and civil plans; not doing these formalities causes the possession to become illegal.

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